

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA

MINUTE ORDER

DATE: 10/06/2016

TIME: 03:35:00 PM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Hellmi McIntyre

REPORTER/ERM:

CASE NO: **56-2015-00465460-CU-BC-VTA**

CASE TITLE: **Aerovironment Inc vs. Torres**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Breach of Contract/Warranty

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**EVENT TYPE:** Ruling on Submitted Matter

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**APPEARANCES**

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The Court, having previously taken the Motion on Privilege Issue under submission, now rules as follows:

The Court is much appreciative of the Statement of Interest of the United States filed by the United States Department of Justice. The Court determines that sufficient relevance for the disputed discovery/depositions exists to necessitate formal invocation of the State Secrets Privilege in order to shield discovery. At this juncture, this Court is merely asking that the privilege be invoked, the Court is not ordering any disclosure, nor is the Court requesting an *in camera* review of claimed State Secret privileged matters. In accordance with *United States v. Reynolds* (1953) 345 U.S. 1, 73 S. Ct. 528, 97 L. Ed. 727, this court is "in no position to decide" that a particular document is privileged until there is "a formal claim of privilege." (*Id.* at 10.) Second, when a formal claim of privilege is made, the Supreme Court in *Reynolds* noted that it is not always necessary to consider evidence *in camera* to sustain a claim of privilege. (*Id.*) "It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged.... In each case, the showing of necessity which is made will determine how far the court should probe in satisfying itself that the occasion for invoking the privilege is appropriate." (*Id.*) The Ninth Circuit has articulated the following standard:

"When considering a motion to withhold classified information from discovery, a district court must first determine whether, pursuant to the Federal Rules of Criminal Procedure, statute, or the common law, the information at issue is discoverable at all. *United States v. Rewald*, 889 F.2d 836, 847-48 (9th Cir. 1989). If the material at issue is discoverable, the court must next determine whether the government has made a formal claim of the state secrets privilege, "lodged by the head of the department which has actual control over the matter, after actual personal consideration by that officer." *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1261 (9th Cir. 1998) (quoting *United States v. Reynolds*, 345 U.S. 1, 7-8, 73 S. Ct. 528, 97 L. Ed. 727 (1953))."

(*United States v. Sedaghaty* (9th Cir. Or. 2013) 728 F.3d 885, 904.)

The Statement of Interest of the United States filed by the United States Department of Justice requests at least a sixty days stay should the court require formal invocation of the State Secrets privilege. Of course, this Court will honor that request and ask that the declaration from the person who has standing to assert the privilege be filed with this court on or before December 15, 2016. All discovery regarding the alleged State Secret privileged matters is ordered stayed until this court resolves this privilege issue.

The clerk is directed to give notice.